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## CRIME AND PUNISHMENT

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626 LAW and the administration of justice among the Barama Caribs are confusing to the civilized mind because, generally speaking, they lack explicitness. As is the case with many primitive groups, therefore, it is necessary to study behavior and attitudes under this head from the functional point of view. Thus broadly considered, law is simply that body of opinion within a group which regulates the behavior of the members of the group. The law performs this function in a twofold manner. First, it defines those actions which are considered offensive to the group as a whole or to individual members thereof. Second, it provides punishments for such offensive actions. The administration of justice, on the other hand, as distinguished from the body of the law itself, we may say has the following functions: first, determining whether or not an offense has been committed; second, fixing responsibility of guilt; third, designating the manner of carrying out the proper punishment or retribution and naming the agents, agencies, or assisting parties, if any, involved. These, I believe, are functions which we may ascribe to law and justice in all cultures. They are functions which lie at the basis of group life and are implied in the continued existence of any organized group of human beings who are living together in society. Without the performance of such functions in one guise or another, the group speedily disintegrates under the disrupting strain of endless unresolved disputes. Such functions are not, however, always obvious; they may be performed formally or informally, publicly or privately, by group or by individual action.

671 Among the Caribs, the publicized, formal aspects of the performance of the legal and judicial functions are minimized.[1] There is in this society no formal enactment of rules of conduct, either by decree or by legislation, there is no constituted legislative

[1] "There was apparently no such thing as public punishment, except perhaps in the case of adultery among the Orinoco Carib, where the whole village populace dealt with the guilty parties. Certainly of the island Carib it is said they know not what it is to punish publicly, or to observe any form in the execution of justice; nay, they have no word in their language to signify justice or judgment." Roth, 1924, *An Introductory Study of the Arts, Crafts, and Customs*, p. 557.

"La Justice, ches les Caribes, n'est point exercee par le Capitaine, ni par aucun Magistrat: Mais tout de meme que parmy les Toupinambous, celuy que se tient offensé entr'eus, tire de son adversaire telle satisfaction que bon luy semble, selon que la passion le luy dicte & que sa force le luy permet. Le public ne s'interesse point dans la recherche des crimes." de Rochefort, 1658, *Histoire naturelle et morale des Iles Antilles de l'Amerique*, p. 467.

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assembly, nor is any individual endowed with the authority to make regulations for the other members of the group. The Indians are, of course, without writing. And, as might perhaps be expected under such conditions, there is also an absence of what might be called courts or judges. How, then, are the legal and judicial functions, which we have just mentioned as being necessary for group life, performed? Let us look for a moment more closely at the social organization in an effort to throw more light on the question.

The factors of tribal unity are territory, language and certain culture traits which are held in common, but are distinct from those of other tribes. Within itself, however, the tribe as such has no political functions and little social importance. The political unit is the settlement, a group varying in size from fifteen to fifty individuals who live and cultivate fields in the same immediate vicinity. These groups are located at wide intervals, usually in the jungle back from the river, and contact between them is consequently not close. Over each settlement is a headman whose authority, however, is decidedly limited and without sanctions. The headman is generally chosen by acclaim for life, or for the term of the existence of the settlement, by the adult men of the group. Several factors enter into his choice: his personality, his economic power, his physical strength. Occasionally a son or other relative of a former headman may be chosen, although such a relationship is by no means the deciding factor. In so far as the headman's personality carries weight, his opinions are respected and in that sense might be construed as part of the law, but few sanctions pertain to him which are not included among the prerogatives of the other members of the group as well. In other words, the headman has no special power to enforce his orders, and in case they are violated, punishment of the offender follows the lines laid down for all personal offenses.

As has been already stated, there is no constituted law-making body or legislative council. It is true, of course, that the adult men of the settlement do consult together on a great range of matters, but these consultations usually take the form of individual exchanges of opinion, much as gossip and conversation take place among ourselves. The only occasion on which all the men of the settlement are likely to be together is during one of the

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626 periodic drinking bouts or sprees, which are sociable rather than
623 legislative gatherings. On these occasions opinions are naturally exchanged, but such interchange can no more be considered legislative enactment than the informal airing of views which takes place in our own society among men, for instance, at a dinner party, smoker, or farmers' picnic. In short, there is no organization for debate or for the determination of the group will and, naturally, no provision for the codification of law.

671 The law of this society, in other words, is customary and tradi-
626 tional law. It is doubtless subject to change, as in the long run are all social phenomena. But, as one would expect *a priori*, and also on the basis of information obtained from older informants, I believe that such change is unconscious and probably much slower
[867] than is the case with most codified legal systems. A Carib child is brought up to know what is considered right and what is considered wrong. By the time he reaches adulthood he knows what his rights and obligations are in any situation within his culture. What we are here calling the principles of law and justice are, consequently, as integral parts of everyday life to a Carib as, for instance, the necessary functions of his body. Such an unconscious assimilation of the law is workable among these people because the simplicity of the society limits the number of possible situations in which an individual would be called upon to exercise his knowledge of legal rights and duties. In a more complex social organization, on the other hand, the ramifications of relationships would seemingly demand a greater specialization in legal and juridical matters than is necessary here. Because everyone is well informed regarding the customary and traditional rules of conduct, the Caribs have little need for self-conscious law-making.

The distinctions between public and private offenses, between criminal and civil law, which play so large a part in the legal concepts of the higher cultures, have little importance among the Caribs. A distinction is present, in the native consciousness, however, between what we may call social and religious offenses, between offenses against human beings and offenses against spiritual powers. It is one thing to trespass on the rights of a fellow man and another thing to transgress a religious tabu. Breaking of a tabu is automatically punished only by the spiritual powers concerned, whereas the punishment of an offense against a human

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being involves the human factor. This section is primarily concerned only with the secular aspects of law and justice, in so far as they can be distinguished. Examples of a positive and of a negative religious rule may be found in the section on Religion.

The infringement of a religious rule of law brings unpleasant results, but there is frequently no idea of obeying the rule as a good in itself. A Carib is surrounded by a vast army of spirits, spirits of the bush and of the streams. Some are characteristically mischievous or malevolent, others are merely finicky and jealous of their rights, which include the treatment to which they are entitled. A Carib must follow the rules of conduct which will keep him out of trouble with the spirits. When he wants positive responses from the supernatural powers, he consults a medicine man or piaiyen. It is practically impossible for a layman to attract the favorable attention of the spirits directly.

On the secular side, law and justice are highly personal. Only in cases, to be described later, in which an individual by the multiplicity and pertinacity of his offenses makes himself a public nuisance or a public menace do the members of the group take united action against him. And in such cases it appears that the group action is taken as the result of a sum of individual grievances rather than from a conscious sociological consideration for the welfare of the group as an entity.

Practically all secular offenses are punished by the victim, or as we would say, the plaintiff, who is assisted in certain cases by specialists having mastery of techniques involving spiritual powers. A man's brothers, real or classificatory, will assist him in these matters upon occasion. The latter practise furnishes the basis for a loose sort of collective responsibility. Signs of a formalized grouping of relatives are, however, lacking.

In a group such as this, where public law is all but excluded by private law, little attention is paid to abstract ideals of right and wrong. A Carib is only mildly interested in offenses suffered by other individuals. Adultery, for example, is regarded as a delightfully exciting game except when one's own wife becomes involved. Retribution is therefore the important factor in punishment.

The most serious offenses are homicide, poisoning, use of sorcery, theft, and adultery. Homicide is justifiable when used as retribution for a clear case of adultery or when it is obviously due to

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of personal ownership, no member of the group is allowed to go in want. In all activities there is much sharing of property. It is distinctly understood, however, that all such sharing takes the form of giving and receiving, or of lending and borrowing. Anyone, therefore, who makes use of goods clearly not his own, without making a suitable arrangement with the rightful owner, is guilty of theft.

Adultery[1] is intercourse with the recognized mate of another individual. Personal attentions on the part of a man to a married woman are punished as adultery because they have but one meaning to a native. However, dalliance with an unattached girl is not considered adultery.

In the first two of these offenses intent, contrary to the practise of some primitive tribes, plays an important part. Accidental homicide and accidental poisoning, if the case is clear, do not call for satisfaction. Regarding sorcery, theft, and adultery, it is almost impossible for the Carib mind to conceive of the commission of these acts without malicious intent.

The Carib philosophy on the matter of intent, stated in our terms, follows the reasoning that accidents are to be classed along with that whole group of natural incidents which are often injurious and inconvenient to human beings. The causes, however, are spiritual or supernatural, and the results are due to transgression, perhaps unconscious, of a tabu. If a man kills or poisons another through accident, he is merely acting as unconscious agent of the spiritual powers who constitute the effective agent and cannot be punished. Personal antagonism, in such a case, is eliminated, the solidity of the group is unaffected, and retaliation has no function. But when a man commits an offense of his own

[1] Adultery was introduced after white contact among the Caribs of the islands, according to Rochefort. Says he, "Heretofore they knew not how to punish this crime, because it reigned not among them before their commerce with the Christians; but now if the husband surprises his wife prostituting herself to some other or have otherwise any certain knowledge of it, he does himself justice, and seldom pardons her, but dispatches her, sometimes with his club, sometimes by ripping up her belly from above downward with a razor or the tooth of an agouti, which is nearly as sharp. This execution being done, the husband goes to his father-in-law and tells him in cold blood, 'I have killed thy daughter, because she proved unfaithful to me'. The father thinks the action so just that he is so far from being angry with him, that he commends him, and conceives himself obliged. 'Thou hast done well,' replies he, 'she deserved no less.' And if he hath any more daughters to dispose of he immediately proffers him one of them, and promises to bestow her on him at the first opportunity." de Rochefort, 1658, *Histoire Naturelle et Morale*, pp. 548–549, quoted in Roth, 1924, *An Introductory Study of the Arts, Crafts, and Customs*, pp. 561–562.

In early times on the Orinoco, according to Gumilla, all recognized adultery, "notably when women commit it, but the Carib is the only nation which has a punishment fixed for adulterers, who are put to death by the whole village populace in the public place." Gumilla, 1791, *Historia natura, civil y geografica de las naciones situadas en las riveras del Rio Orinoco*, Vol. 1, p. 132, quoted in Roth, 1924, *An Introductory Study of the Arts, Crafts, and Customs*, p. 562.

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free will, that is "with intent," the origin of the cause can be reached and compensation extracted.

To obtain satisfaction from one who has committed an offense against him, a man may have recourse to one or more of the following media of action: (1) poisoning, (2) sorcery, (3) violence, (4) kanaima. And the group may resort to (5) violence, (6) ostracism and (7) exile to rid itself of an undesirable member. The first four types of punishment may be called private, the last three public. Again, private violence and all group methods are overt, whereas poisoning, sorcery, and kanaima are secret.

Poison may be administered either in food or drink. The most common practise is said to be to insert some of the poison in the cassiri or paiwari when the drink is handed to the intended victim during one of the periodic drinking bouts or sprees. The liquor is passed to guests at a drinking bout in calabashes, and the approved technique of poisoning consists of placing some of the poisonous material under one of the finger nails, which in the act of passing the calabash is allowed to slip into the liquor.[1]

Varieties of poison are as follows:

(a) The most dangerous poison is said to be the ashes of the bloody apron (wawrish shamisharu tupuru) worn by a menstruating woman. This poison will cause the victim to vomit blood.

(b) The poisoner's finger nail, scraped fine and put in the drink, is regarded as a deadly poison for all persons except the administrator.

(c) Bottle glass pounded fine is a reliable method and is said, with good reason, to be the quickest of the poisons.

(d) The bones of any snake, burned or dried and subsequently powdered, are regarded as poisonous.

(e) Paito, a small fish which when burned gives a supposedly poisonous ash, is also administered in drink.

As might perhaps be expected, an antidote may be used for all of the above poisons with the exception of c. A tea is brewed from the leaf of a certain tree (muritchawa), which when imbibed causes vomiting. This brew must be made in secret in the afternoon, put out in the evening dew to cool, and must be drunk before retiring and immediately upon rising, so that vomiting takes place twice.

[1] This technique in poisoning is reported from several other Guiana tribes. See Roth, 1924, *An Introductory Study of the Arts, Crafts, and Customs*, pp. 562–564.